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## Chapter 7

### ‘INDEFENSIBLE AND IRRESPONSIBLE’

Interdisciplinarity, truth and #reviewer2

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# ‘INDEFENSIBLE AND IRRESPONSIBLE’

## Interdisciplinarity, truth and #reviewer2

*Emilie Cloatre and Dave Cowan*

### **Socio-legal studies as problematic**

On one level, socio-legal studies is a curious discipline. Academics who profess such a specialism often seek to “characterize, classify, specialize” as Foucault (1977: 223) describes disciplines, in contradistinction to sovereign law. One consequence of socio-legal studies’ openness has been its over-inclusiveness, such that, as Cownie (2004: 56) observed of her legal academic interviewees,

Some of those describing themselves as “black letter” appeared to be adopting a very similar, not to say identical, approach to others who described themselves as “socio-legal”, so that the line between legal academics adopting a doctrinal perspective and those adopting a socio-legal perspective is not always clear.

This interweaving of doctrinal law and the socio-legal represents one problematic – socio-legal studies has yet to cut off its law head. However, the search for boundaries proceeds, in part, because of an apparent desire of socio-legal scholars to bracket themselves off from the doctrinal lawyers. In a more recent vein, socio-legal scholars have looked in on law, making a series of insightful observations (Riles, 2005-06; and the chapters in Cowan and Wincott, 2017). As Blomley (2014) suggests, law both brackets in and produces non-law in that which it brackets out, and it does so through the technology of framing. Socio-legal scholars have spent a considerable amount of energy explaining technical legal knowledges. It is this technical knowledge that is, as the textbooks tell us, often contradictory (Cownie et al., 2010; Mulcahy and Stychin, 2010) and that begins the process of the accretion of the “constellation of elements” that builds into technical legal knowledge (Riles, 2011: 64). Perhaps also, it is this objectivity that provides the legal technique with its power – its seeming neutrality, a commonplace observation, as well as its insistence on relevance and market-centredness (Bankowski and Mungham, 1976: 7), points that are replicated in our “great” textbooks. Indeed, Bankowski and Mungham’s lament remains the case:

law is presented as capable of reproducing itself in the style of an hermaphrodite. Where “outside influences” are conceded, they are usually acknowledged in the form of a variant of the “Great Man Theory of History” thesis. ... Since law

textbooks encourage the idea that “the law” is somehow above “politics” or separate from it, then it is not surprising that they turn away from the study of how different conflicts of interests have impinged upon and shaped the law.

(*Ibid.*: 33)

By almost complete contrast, socio-legal studies sets itself up as interdisciplinary. It is rather peripatetic in the kinds of discipline with which it engages. And, this peripatetic interdisciplinary project is sometimes regarded as unproblematic, even though there are epistemological dangers. In his elegant essay on interdisciplinarity, Fish argues that there are limits to what is, or can be, possible. So, for example, he points out that “importing into one’s practice the machinery of other practices” is problematic “because the imported product will always have the form of its appropriation rather than the form it exhibits ‘at home’; therefore, at the very moment of its introduction, it will already be marked by the discourse it supposedly ‘opens’” (Fish, 1994: 239). This problem of interdisciplinarity was at the heart of the debate in the late 1990s between Roger Cotterell (1998) and David Nelken (1998) about the allegiance of a “sociology of law”, a kind of insider–outsider debate. That is, from where should the sociologist of law view their subject/object, and indeed whether a transdisciplinary approach is possible. The debate coalesces over the following argument:

As sociology tries to understand law, law disappears, like a mirage, the closer the approach to it. This is because as sociology interprets law, law is reduced to sociological terms. It becomes something different from what it (legally) is; or rather, from what, in legal thought, law sees itself as being.

(Cotterell, 1998: 175)

This problem of interdisciplinarity becomes particularly marked in those “law and ...” type enquiries that underpin much of socio-legal studies’ cross-disciplinary excursions. In these kinds of foray, there is sometimes a kind of disciplinary imperialism being worked on, one way or the other, which emphasises a disciplinary disunity most particularly in the conjunction. Beginning from a laudable aim – to expand epistemological narratives – they can end up merely re-affirming law first; that is, we see the “and ...” from the perspective of law (for similar arguments, see Nelken, 1993). We do not wish to suggest here that these studies have not expanded our appreciation of law, most significantly in implementation studies (which have produced the “gap problem” – that is, the gap between formal law and its implementation).

Other scholarship, particularly that influenced by what has been described as the Amherst Seminar (compare Trubek and Esser, 1989; Sarat, 1990), has moved beyond these oppositions towards an approach in which, empirically, law is intertwined with society. Ewick and Silbey (1998), for example, critique the “law first” tradition of scholarship, arguing that it has drastically narrowed our vision, and that, despite the research which shows that law “has no center and little uniformity, it is often implicitly assumed that the law is still recognizably, and usefully distinguishable from that which is not law” (p. 19). If we unhinge law from its institutional setting and think about the cadences of legalities in everyday life, “we must tolerate a kind of conceptual murkiness” (p. 35). Their sleight of hand was to make a shift from “law and society” to “law *in* society” (*ibid.*). As they put it, “[r]ather than something outside everyday social relations, legality is a feature of social interaction that exists in those moments when people invoke legal concepts and terminology, associating with law with other social phenomena” (p. 32). This move has led to a raft of scholarship,

which has been concerned with the weave between legality and the everyday lives of people. Rather than focus on the law among some form of explicit or implicit hierarchy of exogenous actors, the shift to the everyday has produced some important findings about law's hegemony.

Part of that move has also involved a hollowing out of the meanings of law. Ewick and Silbey, for example, use the word legality "to refer to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends" (p. 22). Uncoupling formal law from legality in this sense has risks (Engel, 1998). Its breadth means that everything is potentially legal so that legality itself becomes meaningless, a container term; as Mezey (2001: 153) suggests, "the law is everywhere so much so that it is nowhere". And, if that is the case, how do we speak to data that suggest that:

more salient factors eclipse the force of law on conscious decision-making [by women in the street-level drug economy] and on their understandings of their situation. Economic realities, gender hierarchies, peer pressure, fear, the need for personal safety – all of these considerations call for extralegal (or quasi-legal) measures to ensure survival on the street.

*(Levine and Mellema, 2001: 180)*

This approach has been most fully developed in what has come to be known as legal geography (see Layard, Chapter 17 in this volume). Braverman (2008), for example, demonstrated how different types of tree (pine and olive) identified the cultivation and non-cultivation of land in Israel and the occupied West Bank, becoming a legible marker of property rights because they are fixed (until uprooted, of course) and capable of being photographed as such. Trees, Braverman suggests, take on the form of enemy soldiers. Summarising the interactions between space and law, Blomley (2003: 30) has a neat expression when he "literally run[s] the words together, and refer[s] to the conjunction [space and law] as a 'splice'".

This broadening out of legality has also led to a focus on what is sometimes reified as "the social" or "society", as if its meaning is self-evident and can be presumed to exist. Even this label, however, has a crumbling edifice. So, for example, Fitzpatrick (1995: 102) argued that the social lacks any objective existence and poses a challenge for socio-legal studies: "whilst society depends on law for its possibility, law has to remain apart from it, resisting reduction in terms of society. Law then also marks a point at which society fails in its universal sweep and becomes impossible". A social study of law "debunk[s] the false beliefs that ordinary people entertain" about it (Latour, 2000: 110). Such findings began in laboratory studies, in which it was recognised that the production of scientific knowledge could not be studied without reconstructing the contexts in which that knowledge was produced (Callon, 1986; Latour and Woolgar, 1986). In her study of different scientific cultures, Knorr-Cettina (1999: 8) notes that expert systems constitute society. The social, in other words, is made up by its epistemic settings, which are themselves intertwined. As Latour (1999: 273) puts it, "The question: 'what links us together?' is not answerable in principle but in practice every time someone raises it a new association is made that does indeed link us together". In this version, power is operated not *in potentia* but "as the consequence of an intense activity of enrolling, convincing and enlisting".

In a particular brand of scholarship, this idea that the social is made up has been the product of a recognition that, in social science, we have focused far too much on the human actors and failed to give due attention to the way in which material stuff makes up the social. This is a point that is made also about size – rather than assume that bigger objects are most powerful,

an empirically problematic point, power is said to be independent of size. As Callon and Latour (1981) suggest, a microbe exercises more power than the sovereign. Or, in a classic study, scallops proved rather more difficult to harvest than scientists hypothesised (Callon, 1984).

Perhaps as a result of its own social label, socio-legal studies has been slower than most of the other social sciences to build this set of understandings into its projects. It has achieved most purchase in socio-legal studies of technology and medicines (see, for example, Rooke et al., 2012; Cloatre, 2013). The recognition of the mutually constituting relationship between law and society, as well as Latour's own investigations into the Conseil d'Etat (Latour, 2010), provides a fruitful mode for this kind of enquiry and has produced some significant studies (Riles, 2011; Cowan and Wincott, 2015). Riles (2011: 72), for example, has demonstrated that legal technique has its own agency; as she puts it, "our tools also shape how we think, what we aspire to achieve, where we choose to go", even if we do so by acts of resistance (because such acts are always counterposed to those tools). It might be regarded as quite surprising that socio-legal studies has not taken on these insights, because law's interdependent relationship with documents and artefacts more generally is so well established that it is axiomatic.

In summary, there are significant issues with the label socio-legal and its apparently unquestioning adherence to interdisciplinarity. The idea that the socio-legal is something that can be the subject of study or studies raises further questions because it suggests that the object of study is unique and homogeneous, whereas the disciplinary gazes are potentially multiple. Further, it suggests that the socio-legal *can* be the object of study, of empirical observations, whereas so much is left invisible and unknown as a result of our ways of knowing. Like Knorr-Cettina (1999: 3), we advocate that we should be less interested "in the construction of knowledge" and more so "in the construction of the machineries of knowledge construction". In so doing, we can recognise, like good ethnographers, the significance of the enfolding of the material with the human. And, we can move towards what we have previously described as "a subtler understanding of law as a relatively fluid, changing, and uncertain set of practices" (Cloatre and Cowan, 2018).

### **Interdisciplinary problems in action: a case study**

In this section, we use an anonymous review of a piece of our joint work as a case study of the problems of interdisciplinarity in the specific context of the university law school. We discuss our own #reviewer2, who regarded our paper as "fundamentally and hopelessly misconceived". This part is *not* by way of an ad hominem attack – quite the reverse, as the reviewer was expressing opinions that are commonly shared and accepted across much of legal academia. As ethnographers of everyday life, our purpose here is to examine the everyday life of peer review of interdisciplinary work. If, as has been suggested by the literature above, we read things from our own disciplinary perspectives, we should be interested in how others read our work. Further, we should also consider just how far doctrinal law concerns are from socio-legal concerns; or, to put it another way, to what extent are we all socio-legal now? If we treat this as a research question, peer review becomes a field for experimentation. Behind the superficial shadow of anonymity, one's work is read and critiqued.

In the first part, we set out the general argument of the paper on which Reviewer 2 was commenting, and our own (and colleagues') critique of that paper. We discuss our observations on the peer review process, as interdisciplinary academics. We then discuss Reviewer 2's reaction to it. We have assumed that Reviewer 2 is male (we do not *actually* know his

gender or identity, because the peer review process operates through anonymity) because of the way he expressed himself, and because our personal experience of the brutal reassertion of what legal scholarship should be about, of the kind we share below, has tended to reflect particular gendered patterns in academia.

We wish to make just one negative point about the review at the outset. We are wizened old professors who have been in the “academic game” for a while. A negative notice is nothing new to us; our skins are collectively thick. However, we expect reviewers to show courtesy to an argument – even if they disagree with it – and to express their reviews in modulated tones (and journal editors to intervene when they do not). We have learned from this review, and we hope that readers of this chapter have the same reaction and will carry that through into their own reviewing practices.

### **Our paper**

In 2017–18, we wrote a paper that brought our separate work together around the study of what we called “the legal consciousness of stuff”. We sought to present a general argument that stuff has legal consciousness (this may be counterintuitive, though we redefined the term “consciousness” in the paper to expand its range).<sup>1</sup> We argued that,

at times [stuff] is imbued with a consciousness and that consciousness is often legal. It is brought into effect by its interactions, enrolments, and translations with, and by, other stuff, which produce versions of legality in action. This means at least two things: first, stuff carries a form of legal consciousness that is unanticipated yet significant in shaping legalities; secondly, where stuff is at the core of what the law tries to do, it is always more than the passive recipient of legal framings, but can be transformative of legal relationships. The materiality of stuff can challenge the law, and always does more than is anticipated. Our argument is that this excess of material significance should not be overlooked when seeking to determine the effects of legal consciousness. Materiality evades and challenges the law; it transports its own scripts of legal consciousness, which are themselves translated and transformed by those legalities. Both in the governance of housing and medicines, stuff is what the law sets out to organise and regulate, yet stuff continues to frame those legal relations and possibilities on its own terms.

The examples we drew upon were selected from our separate studies. One study was about “shared ownership”, a type of low-cost housing option that is sold as “ownership” but also as “part buy, part rent”. It is a recognised form of social housing. In essence, the buyer buys a share of the property and rents the remainder from the landlord. Really, the relationship is one of a long lease, and there have been concerns expressed that buyers are unclear about the obligations they are taking on. There have also been concerns because of a recognition that the buyer’s security is limited following a court decision in which the long lease was held to be a normal tenancy. Broadly, the landlord could obtain possession if there were rent arrears of more than two months.

In our paper, we drew on two examples from this study: first, the marketing brochure for particular developments. We argued that socio-legal studies has neglected such materials, but that they tell us much in the way they translate complex ideas into simple pictures and grids, which are then translated back into a vision of the expected buyer. In addition, we

1 For the sake of transparency, the paper appears on Cowan’s researchgate site.

drew on a small nugget from an interview with a buyer, conducted during the project. The buyer had referred to cleaning up a sweetie wrapper outside her home. There was nothing unusual about that. However, it was the way in which the buyer used the sweetie wrapper – she had used it as a device to divide herself off from social rented housing. It was the kids living in social rented housing who dropped the sweetie wrapper, who didn't care about the estate; on the other hand, the act of cleaning it up performed her identity as different from – and, probably, better than – the social renters. It was an example of what the literature refers to as an act of selective belonging.

Second, we drew from examples in which medicines performed types of socio-legal relationship, to blur further the boundary between material vibrancy and legal consciousness. We interrogated, first, how to characterise the fields of relationships that surround so-called “counterfeit” medicines (a category that is highly uncertain) and how the materiality of certain drugs appears to carry and mediate particular types of legal existence. We argued that the markets of “fake” drugs are in part mediated by the particular legal assumptions that are embedded in particular types of drug, and that such embedding is not so different from what has been labelled as legal consciousness. Next, we described the many ways in which medicinal plants can reinvent themselves to escape legal categories and argued that reducing this legal vibrancy to one of human consciousness does not enable us to capture the socio-material processes at play.

Throughout, we were explicit about our provocation in the use of the term “consciousness”, but argued that what has been captured under that label does not inherently and exclusively have to be human, and that legal consciousness scholarship may be missing some important forms of relations by focusing too much on humans.

### **Self-critique**

We recognise now that we oversold the argument. Our friends and colleagues told us so. As one generously said,

I'm afraid I don't think the paper's actually about legal consciousness. I read the paper as being about (in the very last words of the text) “the everyday operation of legalities”. And I'm convinced by your argument about the importance of materiality and attention to “stuff”.

Others, more directly, told us that they found it hard to see how stuff could possibly have a consciousness. For what it is worth, we now agree with those critiques. However, before we got to that view, we had submitted it to a journal.

We selected the journals (there were two) to which we submitted the paper carefully. Both had a reputation for publishing excellent, cutting-edge socio-legal articles. Both were “general” journals, in the sense that they are not aligned with any particular method or methodology, but publish papers that are concerned with law and legality. The first journal rejected the paper broadly for the same reasons as our friends and colleagues – their two reviewers were unconvinced by the legal consciousness framing of the paper, and the data being both international and national made it harder to generalise about stuff. The second journal rejected the paper. The first reviewer broadly shared the same views as the other reviewers.

At this point, we should say something about the review process used by leading journals. As a general rule, papers submitted to an academic journal are peer reviewed – that is, subject to review by other academics. It can, occasionally, be a bruising process, although the best peer reviews explain how a paper can be improved and the reviewer's reasons for their recommendation to the editor. Peer review is both a validating and self-validating

process, in which the peer reviewer enacts both expertise over the field and judgement as to whether the paper itself contributes to that field.

Peer review for interdisciplinary scholarship – or scholarship that seeks to be interdisciplinary – can be particularly fraught with problems, in part because of the problems inherent in interdisciplinary research. For journal editors, the selection of reviewers frames the process. For socio-legal scholarship, and when publishing in “mainstream” law journals in particular, a danger is always to let the subject matter rather than methodology dictate that selection. The not-so-hidden secret in academia is about the vicissitudes of the review process – how reviewers differ in tone and substance about the same paper, how they critique a paper because it is not the paper they would have written, or how they might be abusive towards the author’s perspective(s). In short, the review process offers a veneer to the selection process, and reviews might say more about the reviewer than the paper. Nevertheless, academics engage in it (as reviewers as well as authors) not just because it is a rite of passage, but also because it validates the paper. This method of judgement is built into academic lives; it has a hegemonic status within the academy; and, oddly, it is rarely the subject of written critique. We turn now to Reviewer 2’s critique of our paper.

### **Reviewer 2: on “reality” and the purpose of scholarship**

Reviewer 2 experienced a strong reaction to the paper, concluding a 1,900-word review as follows:

The bright side is that the authors need not bother with revising and resubmitting. The fact that the framework of this piece has proven to be worse than useless frees them to get on with work in their areas – “shared ownership” and housing, generic/counterfeit drugs and medicinal plants – which, if the authors focus on reality including the actual law, could be genuinely useful and important.

We should not move on without commenting on the reviewer’s requirement for us to “focus on reality including the actual law”. This framing of the critique – that we had failed to focus on the real and the law, and that studies should be “genuinely useful and important” – makes important dual points about ontology and the very purpose of socio-legal studies. Both of these points are at the heart of the socio-legal problematic discussed above. As socio-legal academics of a particular “postish” bent, we appreciate that there is no single reality, but multiple realities. This is what the interdisciplinary endeavour tells us – reality is a question of perspective.

Postdisciplinary scholars might ask what purpose the real and reality serve. One answer is to trace this response back in the ways in which law has been taught and researched in university law schools in the UK. This story has been told many times (see, for example, Twinning, 1967; Siems and Mac Sithigh, 2012). As Willock (1974: 3) put it, in a still-relevant thick description of the problems lawyers and sociologists have in working together:

For the sociologist [law] is one regulator of human behaviour among many, a very precise and overt one, possibly one indispensable to social life, but with no claim to uniqueness. The lawyer sees it as marked off from other social controls, by its coercive force and by its official character. For [the lawyer] law is not a mere pressure to be identified, but an instrument to be wielded. [The lawyer] is not unaware of the shadowy shape of custom, but tends to dismiss it as either insignificant or belonging to the past. [The lawyer] distinguishes social sanctions from legal ones as being spasmodic, undirected and thus unpredictable.



One can discuss this tension between, on the one hand, the insularity of doctrinal law as taught in universities and, on the other hand, the growth of social sciences, both as a historical as well as an intellectual development. So, for example, in the 19th century, law “was seen as ‘a practical’ subject ... only ... learnt by practice and not by systematic, scholarly instruction” (Siems and Mac Sithigh, 2012: 659–60). The 20th century was marked by the growth of both the social sciences and university legal education, with the latter eventually largely displacing the “apprenticeship” model of entry to the legal professions. Ironically, from the 1960s, significant expansion of university legal education concerned with preparing students for practice ran alongside the growth of interest in and affinity of some academic lawyers with the (also expanding) social sciences – although the latter is probably most accurately seen as lagging somewhat behind the former (for example, the UK Socio-Legal Studies Association was only founded in 1990).

Tensions between law as social science and law as single unit discipline in its own right do emerge, often in unlikely moments. Whereas legal technicality is the subject of doctrinal law, suitably presented as a series of principles in textbooks, socio-legal scholars have tended to ignore such problems, regarding them as tedious or distasteful (Riles, 2005–06: 976). The power of legal technicality lies in its seeming neutrality, its apparently atheoretical stance, as well as its insistence on relevance and market-centredness (Bankowski and Mungham, 1976: 7). It is this which produces Reviewer 2’s “reality”, by which is meant a kind of truth about law.

Reviewer 2’s rallying cry for scholarship that is “genuinely useful and important” reflects particular discussions that animated the broad socio-legal community in the 1970s and 1980s about what Sarat and Silbey (1988) described as “the pull of the policy audience”. The concern was that socio-legal studies had lost its sociological edge; that, in seeking policy relevance, it had been captured by the policy audience such that it was no longer its own master. This call for relevance remains a tension within the socio-legal community and underlines the significance of the judgement of whether research is important or not. It also raises questions about the purpose of research – is it for academic endeavour (at the risk of speaking to a limited, echo-chamber audience) or to have an impact on that part of reality which is practice (at the risk of the sneering of sociologists). Such a binary is unlikely to represent “reality” – as impact case studies for the Research Excellence Framework are likely to tell us – but this question of audience does represent a consistent tension in academic life.

## Reviewer 2 and “legality”

Reviewer 2 aimed the first part of his critique at the theoretical framing of the paper. It would be fair to say that he had a strong reaction to the way in which we used and developed the idea of legality and actors. His starting point was the familiar one that objects do not have consciousness, but he was less complimentary about our attempt “to bolt together and latch onto what they believe are prestigious works by others” – Ewick and Silbey’s *The Common Place of Law* and the work of Latour and ANT scholars. As regards the former, he took issue with Ewick and Silbey’s label of “legal consciousness”, arguing that they were not talking about legality because “the practice involving the chair did not actually create any legal rights and the participants in the practice recognised that it did not”. Further:

If a practice does not create any legal rights, and those who practise it are conscious of this – conscious that they are asserting extra-legal rights – labelling such beliefs

and practices as “legal consciousness” is a bizarre denial of reality. Ewick and Silbey are US sociologists; if the discipline of sociology in the US wishes to foster bizarre denials of reality, that is their business. It is certainly not ours.

He then took on our argument that stuff can have a legal consciousness by reference to Latour’s concerns that, “The hard-core natural sciences have aimed and claimed to be about active human agents discovering, manipulating, and characterising passive objects” (Latour, 2000: 116). However, as he put it, “No one was daft enough to swallow Latour whole and believe that things like chairs were conscious actors rather than objects”.

Sometimes borrowing from theorists in other disciplines is helpful, but not always; amongst other things, context matters. My knowledge of Latour’s work comes from my extra-legal interests; legal scholars have overwhelmingly ignored Latour, for good reason. The essence and purpose of law has never been or purported to be the investigation and characterisation of passive objects; the essence and purpose of law is and always has been about evaluating human actions (including an evaluation of whether, even if the defendant has done some wrong, it is the sort of wrong against which the law ought to intervene). In this fundamentally different context, Latour’s presentation of things as actors is worse than useless – as the authors’ attempts to apply it demonstrate.

We will not comment in detail about Reviewer 2’s analysis of Latour’s ideas, simply because it is less relevant to our purpose here. However, the way in which Reviewer 2 frames his reading of Latour’s work as “extra-legal” and that “legal scholars have overwhelmingly ignored Latour, for good reason” provides an important reflection on that socio-legal scholarship which has engaged with this work. Reviewer 2 is reminding us about the essence of law, which is to be neither challenged nor revisited because of the truths that it sets down. It is “extra”, othered by its outsider performance; it cannot offer anything useful to doctrine and the reading of law because that is about human actions. This doctrinal reflection on Latour’s oeuvre (and that of others in that tradition) might be critiqued as being blinkered (particularly because Latour has expanded his investigations to law), but it points to the proper disciplinary limits of law and critique in the academy, as envisioned by Reviewer 2.

Here, the process of peer review as a form of peer and expert engagement with socio-legal work also raises fundamental questions about who the experts of socio-legal scholarship are or should be; in other words, peer review operates not just as a gatekeeper for socio-legal work, but also as a validating device. To “get through” peer review, your peers must accept the validity of the ideas. Given Reviewer 2’s understanding of “truth”, “reality”, “the essence of law”, and what is most important in our work as legal scholars, Reviewer 2 offered his appreciation of the invalidity of our work certainly in the more limited sense of its appearance in a legal journal. In so doing, of course, he pointed out that with which we were already familiar about the problems of doctrinal law, and missed the point of our paper because it was extra-legal. This brings into question how strongly socio-legal writing can be regarded as a distinct field of expertise, against the classic thematic categories of legal fields.

On the substance of the review, the essential division between Ewick and Silbey and Reviewer 2 lay in the significance of the extended definition of legality, something that has no formal existence in law. This is both an important division for socio-legal studies and its relation to the academy, and a methodological division. Reviewer 2 was particularly animated by formal law and matters that are defined out as extra-legal. This problem is both

difficult and one on which there is legitimate disagreement in the academic community. After all, as Reviewer 2 suggested, labelling extra-legal matters as legal is, in one view, “a bizarre denial of reality” (ignoring the point about reality made in the previous part). It is a contradiction in terms. It also extends the meaning of law to the extent that, as Mezey (2001) suggests, it lacks coherence and meaning because everything can become legal.

Yet, if one suspends reality for a moment and considers the empirical findings of scholarship, what gives the chair in the snow its particular power is that the neighbourhood observes it. This is the methodological point about a shift in focus in socio-legal studies away from formal law, and what that might mean. It is – to use a slightly different expression – a norm of everyday life. In collapsing back into the everyday, socio-legal studies has found the way in which legality has this extended meaning in the mundane. This is not law backed by state sanction, but norms that are understood as such and that attract community opprobrium and reputational damage in the breaking. As Engel (1998: 141) suggests, “more often law is mediated through social fields that filter its effects and merge official and unofficial systems of rules and meanings”.

## Reviewer 2 and the irresponsible authors

In the substance of the review, we learn what Reviewer 2’s version of reality looks like. Expressing himself in trenchant terms, Reviewer 2 commented about what he described as our “purported illustrations”. As his comments on our readings of our examples unfold, we learn about what he sees as legitimate or non-legitimate ways to think about the law, which tells us something about the fragile place of socio-legal scholarship in the legal academy. In particular, the challenge to opening law up to critical, interdisciplinary analysis reminds us of how, in spite of its increased visibility, socio-legal scholarship is still built *against* a particular (doctrinal) canon.

To illustrate this, we use only the parts of the review that engage the example of shared ownership – this is both the example that Reviewer 2 comments upon in greater detail and sufficient to make our point. The reviewer felt that we should emphasise how shared ownership “truly works in practice” as a matter of law. Back on the comfortable terrain of “truth”, Reviewer 2 explains in some detail what we knew anyway: the mechanics of shared ownership. We will spare readers the details of the scheme. What is of interest is Reviewer 2’s conclusion: like us, he emphasised that there is a significant difference between how shared ownership is sold (including in the material brochures our paper considered), what shared owners themselves think it offers, and the legal relations that it formally creates:

So the guff described in the marketing materials, and the beliefs of the interviewee – all about “ownership” – have nothing whatsoever to do with the actual law. They bear no relationship to the legal nature of these schemes or the legal position of the interviewee, and therefore bear no relation to reality. That is a genuinely important point, which deserves jumping up and down and screaming about – these schemes are practically fraudulent; and most people, even most lawyers, are not aware of this.

Instead, the authors obscure the stark difference between these false representations/beliefs on the one hand and the law on the other through guff about “legalities” and “legal consciousness” defined in such a way as to assert that there is no difference between the law and false representations/beliefs about the law. That is indefensible and irresponsible.

Reviewer 2's concerns that our approach was "indefensible and irresponsible" must be addressed because, at heart, it raises methodological concerns about the absence of law. What if, in the everyday lives of research participants, formal law is entirely absent or negotiated around. This is not "bargaining in the shadow of the law", but a routinised irrelevance of law. Our approach to the shared ownership relation, as well as our focus on the representation of status through things, was "indefensible and irresponsible" because it ignored the significance of the particular underpinning document – the lease – which places the buyer in an appalling position. As Reviewer 2 pointed out, we should be jumping up and down about that. Reviewer 2 perhaps overextends himself in describing this as fraud, but rather makes our point for us because this is a colloquial rendering of fraud: it is the weaving of an extra-legal version of fraud with everyday life. These schemes are not "fraud" as the law understands that term, in either criminal or civil law.

Doctrinal legal scholars have described the shared ownership relation by analogy with the fable about the emperor's new clothes. However, methodologically, this places law first and, in its reification of law, places law above everything (there is a kind of irony in Reviewer 2 being, in Ewick and Silbey's terms, "before the law" in his assessment). We knew and appreciated this. Our enquiry was methodologically different: how is shared ownership experienced and made sense of in everyday life? And, as a result, we were able to note how shared owners produce and construct "ownership" practically, weaving in formal legal appreciation of ownership as control over property, but also, and importantly for us, dividing themselves off from the other – that is, renters. We sought to demonstrate – albeit unsuccessfully for Reviewer 2 – how shared owners express their version of legal ownership, abstracting themselves from other tenures (even though, ironically, they form part of those other tenures, as Reviewer 2 points out). This, in our view, remains a neglected aspect not only of legal scholarship, but also of the essence of law as lived experience.

## **Conclusion**

Socio-legal scholarship, like all fields of knowledge, is permanently "in the making". New ideas continue to be imported and borrowed from an ever-increasing set of disciplines and resources, with a view to developing new insights into what law is about, how it works, and what it does, as well as what it might do. This comes with a number of difficulties. In this chapter, we explored three main sets of such difficulties. First, questions of identity: as socio-legal studies has evolved to assert itself as a distinct field of study, the precise nature of that distinctiveness has not always been clear. Institutional pressures for more interdisciplinary scholarship, as well as the numerical growth of scholars identifying as socio-legal, have meant that the boundaries between the interdisciplinary and the mainstream have at times lost salience. Second, socio-legal scholarship has rendered the boundaries of the "legal" fragile, at times to the point of effacement. This results in the possibility that law can be decentred as an object of analysis, but it also requires a proficiency in the interdisciplinary tools needed to explore broader social patterns that goes beyond the simple borrowing of ideas or methods. Third, socio-legal scholarship, in spite of its growth and increasing visibility, remains marginal in parts of the legal academy. Many of us have enjoyed careers where we can play with disciplinary boundaries and have enough of a community of interdisciplinary legal scholars that we have the luxury to forget about the precarity of such scholarship. Every now and then, however, we are reminded of our position, and indeed of the persistence of ideas about truth and reality within the legal academy.

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